CF0000063174

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Criminal Appeal No. 260 of 2000.

APPELLANT : Kamta Prasad S/o Sunderlal Mourya aged about 26 years, R/o Tikrapara, P.S.City Kotwali, Bilaspur, Tehsil and Distt. ~~Jabalpur~~ Bilaspur, M.P. In Jail

VERSUS

RESPONDENT: State of Madhya Pradesh, through Station House Officer, City Kotwali, Bilaspur, M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:
Hon'ble Shri Justice L.C.Bhadoo, &
Hon'ble Shri Justice V.K. Shrivastava,JJ.

26/09/2006

Shri Vimlesh Bajpai, counsel for the appellant.

Shri G.D. Vaswani, Additional Public Prosecutor with Shri U.K.S Chandel, Panel Lawyer for the State.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 24/12/1999 passed by Ist Additional Sessions Judge, Bilaspur, in Sessions Trial No. 267/1999 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month.

The case of the prosecution, in brief, is that Asha Mourya (since deceased) was married to accused/appellant Kamta Prasad in the year 1993. After the marriage, accused used to harass and subjected to cruelty his wife for bringing dowry. On the fateful day i.e., 03/05/1999 accused asked his wife to bring money from her parents on which deceased Asha Mourya replied that how long her parents will give money to him, now, there is no money. On

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hearing this, accused/appellant after pouring kerosene oil on the body of Asha Mourya set her on fire. When the parents of Asha Mourya received the information regarding burning of their daughter, brother of Asha Mourya namely Kishore (PW/3) along with another brother Jogendra went to the house of Asha Mourya. They saw that Asha Mourya was lying in a room in burnt condition. In the meantime, maternal grand-mother of Asha namely Sumitra Bai and her father Shriram also reached there. Accused started abusing and beating grand-mother namely Sumitra Bai and pushed her as a result of which she fell down. They immediately took Asha Mourya to the hospital in a rickshaw and got her admitted in the hospital. On enquiry, Asha Mourya informed that the accused/appellant was demanding money since morning and beating her. On refusal to accede the demand of accused, he set her on fire and said that he will murder her. The matter was reported by brother of the deceased namely Kishore (PW/3) in the Police Station City Kotwali, Bilaspur on the same day at about 11.20 a.m. On receiving this report, Station House Officer, PS: City Kotwali, registered the first information report under Ex.P/16, reached the hospital and requested the Executive Magistrate for recording the dying declaration of Asha Mourya as the body of Asha Mourya was burnt up to 90% and in turn Executive Magistrate – Shyam Sunder Dubey (PW/11) recorded the dying declaration under Ex.P/15. The injuries of Asha Mourya were examined in Dharam hospital by Dr. Vimala Jain

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(PW/8) and after examination, she prepared the injury report (Ex.P/11). Sumitra Bai was also medically examined by Dr. Vimla Jain and she prepared her injury report (ExP/9). In the meantime, Asha Mourya succumbed to burn injuries in the hospital on 05/05/1999. Therefore, the Investigating Officer after giving notice (Ex.P/1 & P2) to the Panchas, prepared inquest report (Ex.P/3) of the body of Asha Mourya. He also prepared site plan of place of occurrence (Ex.P/4). The Investigating Officer under Ex.P/5 seized one plastic *kuppi* of kerosene oil, burnt stick of match box, one half burnt blouse, petticoat and match box. The smell of kerosene oil was emanating from the burnt clothes of the deceased. The postmortem of the body of Asha Mourya was conducted by Dr. Santosh Kumar Mishra (PW/7) and Dr. Sushila Rao and they prepared the postmortem report vide Ex.P/7 in which they found that almost all the parts of the body of Asha Mourya were burnt and opined that the cause of death was as a result of severe and extensive ante-mortem burn injuries leading to shock and septicemia, mode of death was asphyxia. The bed head ticket of Asha Mourya was taken into possession from the hospital under Ex.P/17. The seized articles were sent to Forensic Science Laboratory, Sagar under Ex.P/15 from where the report (Ex.P/20) was received.

After completion of the investigation, charge-sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur, who in turn

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committed the case to the Sessions Judge, Bilaspur, from where he received the case for trial.

The prosecution in order to establish the charge against accused examined thirteen witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent.

Learned Sessions Judge, after hearing the arguments of Additional Public Prosecutor and learned counsel for the accused/appellant, convicted and sentenced the accused as mentioned in para one of this judgment.

We have heard learned counsel for the parties, perused the judgment of the trial Court and evidence available on record.

The whole case rests on the circumstantial evidence and there is no direct evidence in this case. In order to convict an accused based on the circumstantial evidence, as per the settled law by Hon'ble the Apex Court, in the matter of **Dhananjoy Chatterjee vs. State of W.B., reported in (1994) 2 SCC 220**, has laid down the law relating to appreciation of circumstantial evidence as under : -

> *"In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so*

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established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

In this case the prosecution has tried to establish charge against the accused/appellant on the following circumstances.

(i) Accused after the marriage started demanding dowry from his wife and for bringing the dowry, he used to harass and subjected to cruelty Asha Mourya.

(ii) Deceased gave dying declaration (Ex.P/15) before the Executive Magistrate – S.S. Dubey (PW/11).

(iii) Deceased gave oral dying declaration before PW/9 and PW/12.

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(iv) Deceased received the burn injuries at the residence of the accused and smell of kerosene oil was found in the burnt clothes of the deceased for which no explanation has been offered by the accused that how the deceased received the burn injuries.

As far as the first circumstance is concerned, Shriram (PW/2) father of the deceased has stated that just after 5 – 6 months of marriage of accused and deceased, accused started demanding dowry and for that purpose he used to beat his daughter. Whenever his daughter Asha Mourya used to come to his house, she used to tell them about the behaviour of the accused. Once she reported the matter to Police Station: City Kotwali regarding beating given by the accused, therefore, the case was filed against the accused regarding dowry. Thereafter Panchayat of their community was convened in which it was decided to give Rs.5000/- to the accused and he assured that here-in-after he will not harass or subject to cruelty to Asha Mourya, but the accused did not stop and again started the same behaviour and ultimately on the fateful day i.e., 03/05/1999, accused demanded money and on refusal by Asha Mourya she was set on fire. Kishore (PW/3), brother of the deceased, who is son of Shriram (PW/2), has also corroborated the above evidence. Kallu (PW/9) who belongs to the community of Mourya, has stated that once Panchayat was convened in his presence and in

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that Panchayat Shriram (PW/2) gave Rs.5000/- to the accused. Bandhu Mourya (PW/12) who was a Chairman of the Mourya community has also stated that there was a dispute between the accused and deceased, Panchayat was convened and he tried to settle the matter. Therefore, from the above evidence, it is established that the accused used to harass and subjected to cruelty to Asha Mourya for bringing dowry before the date of incident and this fact has been proved by the independent witnesses of the community of the accused and deceased.

As far as second circumstance is concerned, S.S. Dubey (PW/11), who was the Executive Magistrate in the year 1999 in Bilaspur, has stated that on 03/05/1999 on the request of Station House Officer, PS: City Kotwali, he recorded the dying declaration of Asha Mourya who was admitted in burn unit of Dharam hospital, Bilaspur and stated that she was admitted in burn unit of Dharam Hospital, Bilaspur. He recorded the statement of Asha Mourya in questions and answers form. Doctor certificate is A to A and the statement is Ex.P/15, which bears his signature at B to B, and Doctor appended the certificate below the dying declaration at C to C. In the dying declaration, Asha Mourya stated that her husband set her on fire after pouring kerosene oil on her body. Perusal of dying declaration (Ex.P.15) shows that on the fateful day accused demanded dowry on which Asha Mourya replied that how long her parents will give dowry to him, now there is no money,

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on this accused set her on fire with match box after pouring kerosene oil on her body. On this dying declaration Doctor's certificate is also there regarding the condition of Asha Mourya for giving the statement. In the cross examination of Executive Magistrate S.S. Dubey (PW/11), defence has not been able to elicit any circumstance whereby it can be inferred that the dying declaration of the deceased was not voluntarily, true or the same was out come of tutoring. This dying declaration has been corroborated by the evidence of father-Shriram (PW/2) and brother Kihore (PW/3).

As far as dying oral declaration is concerned, Shriram (PW/2) has stated that on 03/05/1999, when he was working in the kitchen garden at about 9 -10 a.m., his servant Gayapasad came and informed them about the incident, on which his son Kishore and nephew Jogendra immediately left to the place of occurrence and he also went to the house of Kamta Prasad, saw that Asha Mourya was lying and they were not allowed to go inside. In the meantime, his son Kishore and brother-in-law Kallu entered the room and Asha Mourya was taken out of the room she was taken to the hospital in a rickshaw. On enquiry, Asha Mourya disclosed that the accused asked her to bring money and on her refusal, he has set her on fire. The above evidence has been corroborated by Kishore (PW/3) who has also stated that oral dying declaration was made before him. PW/2 Shriram and PW/3

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Kishore who are father and brother of the deceased immediately rushed to the place of occurrence and they themselves took her to the hospital, therefore, being father and brother, she disclosed them that she was set on fire by the accused on account of non-fulfilling his demand of dowry. In their cross examination also defence has not been able to elicit any circumstance in order to make their evidence untrustworthy or unreliable.

PW/9-Kallu and PW/12 Bandhu Mourya have also stated that the deceased made oral dying declaration before them that the accused was demanding money from her and on her refusal, he set her on fire. Therefore, from the evidence of Shriram (PW/2), Kishore (PW/3), Kallu (PW/9), Bandhu Mourya (PW/12), it is established that deceased gave oral dying declaration before them regarding setting her on fire by the accused after pouring kerosene oil on her body.

As far as fourth circumstance is concerned, as per the evidence of PW/2 Shriram and PW/3 Kishore, the burnt body of Asha Mourya was lying in the house of the accused which has not been disputed by the accused, from there she was taken to hospital by her father (PW/2) and brother (PW/3) Kishore. Half burnt clothes of the deceased were taken into possession by the Investigating Officer under Ex.P/5 along with other articles i.e. plastic *kuppi* and match box. These articles were sent to FSL, Sagar, from where report (Ex.P/20) was received. As per FSL

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report, kerosene was present in the burnt clothes of the deceased which is evident from Ex.P/5 and it has also been mentioned in the report that smell of kerosene was emanating from the burnt clothes of the deceased and the accused has not given any explanation that how the deceased received burn injuries, therefore, this circumstance also goes against the accused.

For the foregoing reasons, all the above four circumstances have been established by the prosecution by impeccable evidence in order to connect the accused with the crime in question i.e., setting Asha Mourya on fire after pouring kerosene oil on her body. Therefore, in view of the above circumstances, the cumulative effect of all the circumstances only irresistible conclusion can be drawn to the effect that the accused was the author of the crime in question, who set her on fire after pouring kerosene oil on her body. Therefore, we do find any illegality or infirmity in the judgment of the trial Court, convicting the accused/appellant under Section 302 of the IPC.

In the result, the appeal fails and same is dismissed.

Sd/-
L.C.BHADOO
Judge

Sd//-
V.K.Shrivastava
Judge

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